THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 24061 of 1996

Dated: 21.02.2007

Between:

The District Co-operative Central Bank Limited, Srikakulam, rep. by its General Manager.

.... PETITIONER

AND

D. Narasinga Rao, C/o P. Nirmala, Visakha Liming and Insulation, Opp: Zinc Gate, New Gajuwaka, Visakhapatnam and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 24061 of 1996

Order:

Feeling aggrieved by the award, dated 08.07.1996, made in M.P. No. 3 of 1994 by the Industrial Tribunal-cum-Labour Court, Visakhapatnam, the present writ petition is filed.

The 1st respondent, who worked for 38 years with the petitioner-Bank, retired on 31.07.1991. He was paid Rs.80,014.35 ps., towards gratuity. In the year 1970, a bipartite settlement, which was marked as Ex.M1, was reached between the management and the employees, and in terms of the same, an award was passed in the year 1970. According to the 1st respondent, he is entitled to receive Rs.93,129/- as gratuity as against a sum of Rs.80,014.35 ps., settled and paid by the petitioner-Bank to him.

The Industrial Tribunal-cum-Labour Court, Visakhapatnam, after considering the material on record, allowed the claim of the 1st respondent.

Heard Sri Deepak Misra, learned counsel representing Sri Koka Raghava Rao, learned counsel for the petitioner-Bank and Sri N. Narasing Rao, learned counsel representing the 1st respondent.

Learned counsel for the petitioner-Bank contended that the 1st respondent, being bound by 1970 award and the subsequent settlement, cannot claim gratuity under the provisions of the Payment of Gratuity Act, 1972 and the judgment of the Supreme Court in ***Jeevanlal (1929) Ltd., v. Appellate Authority under the Payment of Gratuity Act and others***[1]. He further contended that the Industrial Tribunal-cum-Labour Court committed a serious error in directing payment of

difference of gratuity on the basis of the provisions of the Payment of Gratuity Act, 1972 and the afore mentioned judgment of the Supreme Court, in spite of accepting the contention of the petitioner-Bank that the gratuity was settled to the 1st respondent in terms of 1970 award.

The short question for consideration in this writ petition is whether the 1st respondent is bound by the award, and if so, whether the claim of difference of gratuity made by him and allowed by the Industrial Tribunal-cum-Labour Court is proper and correct.

From the contentions raised and the arguments advanced, it is evident that the award, dated 30th March, 1970 in I.D. No. 18 of 1967, *inter alia*, provides as under:

> "**GRATUITY**:
>
> Every confirmed employee shall be eligible to the benefit of gratuity scheme on the following basis:
>
> i) On death while in service: one month's pay for each year of service with a minimum of 5 months pay and maximum of 15 months pay to his heirs executors, assignees, or nominees.
>
> ii) On becoming physically or mentally disabled to continue in service, resignation, voluntary retirement, termination of service for what ever reason.
>
> On completion of 5 years service at the same rate prescribed as in No.(i).
>
> Service for a calculation of gratuity amount means the length of service from the date of joining and pay shall mean basic pay, dearness allowance, special allowance last drawn."

Though the Industrial Tribunal-cum-Labour Court, in its award under challenge, allowed the application on the purported ground that the award was not filed and that in the absence of filing of award, the 1st respondent is entitled to payment of gratuity as per the provisions of the Payment of Gratuity Act, 1972 and the afore mentioned judgment of the Supreme Court, which reasoning may not be correct, however, it is

clear from the said Industrial Tribunal-cum-Labour Court award, dated 30th March, 1970, the relevant portion of which is extracted above, that the number of days to be taken into account in a month for the purpose of calculating maximum 15 months pay is not indicated in the award. In the absence of such an indication, it is quite reasonable to take 26 days as constituting the month instead of 30 days as held by the Supreme Court in ***Jeevanlal (1929) Ltd., v. Appellate Authority under the Payment of Gratuity Act and others*** (1 supra). Looking from this perspective, though the reasoning of the Labour Court may not be sound, it's conclusion in directing payment of difference of gratuity, in my view, is in accordance with the award, which in the absence of number of days mentioned therein, is required to be interpreted in the light of the afore mentioned judgment of the Supreme Court. I am, therefore, of the view that the 1st respondent is entitled to the difference of gratuity amount as claimed by him before the Labour Court on the premise as afore mentioned.

I do not, therefore, see any merit in the writ petition, and it is accordingly dismissed, but in the circumstances without costs.

_____

C.V. NAGARJUNA REDDY, J.

Date: 21.02.2007
Nsr

---

1 AIR 1984 SC 1842